

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

IN THE MATTER OF THE APPLICATION OF BULLDOG COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8153-M1	AQB 21-31
JAYHAWK COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8152-M1	AQB 21-32
LONGHORN COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8349-M2	AQB 21-33
COWBOY CDP (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 7877-M1	AQB 21-34
WILDCAT COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 7474-M2	AQB 21-35
ZIA HILLS CENTRAL FACILITY (CONOCOPHILLIPS) FOR AN AIR QUALITY PERMIT, NO. 7746-M8	AQB 21-36
WILLOW LAKE GAS PLANT (CRESTWOOD, NEW MEXICO) FOR AN AIR QUALITY PERMIT, NO. 5142-M8	AQB 21-38
MAVERICK COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7565-M2	AQB 21-39
SPARTAN COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7681-M2	AQB 21-40
TIGER COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7623-M2	AQB 21-41

**APPLICANT CONOCOPHILLIPS COMPANY’S CLOSING ARGUMENT AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

INTRODUCTION

Applicant ConocoPhillips Company (“COPC”), in accordance with the New Mexico Environment Department (“NMED” or “the Department”) permitting procedures at 20.1.4.500 NMAC, and the Scheduling Order dated July 20, 2021, hereby submits its closing argument and proposed findings of fact and conclusions of law.

This matter is before the Hearing Officer based on WildEarth Guardians’ (“WEG’s”) March 12, 2021 hearing request. *See* AR at 1219-1220. WEG challenges NMED’s issuance of the draft New Source Review (“NSR”) permit No. 7746-M8 (“Draft Permit”) for COPC’s Zia Hills Central Facility (“Zia Hills Facility”). None of WEG’s assertions – including those raised in its initial public comment letters, pre-filed written testimony, and oral testimony during the hearing – have merit. COPC met all requirements for issuance of the Draft Permit and met its burden of proof during the hearing in support of issuance of the permit. In addition, NMED supports issuance of the permit. For these reasons, and as set forth in more detail below, COPC requests that the proposed Draft Permit be issued as a final permit.

I. Facility and Permit Background

The Zia Hills Facility is a central gathering facility located in Lea County, New Mexico. *See* COPC Amended Ex. 2 at 1. The Zia Hills Facility receives oil and gas from wells and compresses and dehydrates natural gas before sending them to sales lines. *Id.* Oil, gas, and water flow separately into the facility. *Id.* Gas is dehydrated and then reinjected for gas lift or compressed to the sales line. *Id.* Oil is stabilized then temporarily stored in tanks before being sold via pipeline. Water is processed, then temporarily stored before being shipped offsite via pipeline. *Id.* Engine emissions are controlled using engine catalysts and emissions from dehydrators are controlled by

reboilers and condensers. *Id.* The Zia Hills Facility also uses a vapor recovery unit (as well as a backup) and three flares to control emissions. *Id.*

The Zia Hills Facility currently operates under the General Construction Permit – Oil & Gas (“General Construction Permit”) issued by NMED. *Id.* Accordingly, the Zia Hills Facility’s operations are currently subject to the terms and conditions of the General Construction Permit, along with other state and federal emissions regulations, including 40 CFR Part 60 Subparts JJJJ and OOOOa. *Id.* COPC has operated the Zia Hills Facility pursuant to the General Construction Permit since 2018. *Id.* at 2.

COPC intends to increase production from the Zia Hills Facility to 18,503 barrels of oil per day and 120 million standard cubic feet per day. *Id.* In accordance with 20.2.72 NMAC, COPC applied for a minor source NSR permit from the Department to authorize the production increase and the equipment necessary to support the increase. *Id.*; *see also* AR at 0001. NMED received COPC’s permit application (“Application 7746-M8”) on January 11, 2021. *See* AR at 0267. After receiving Application 7746-M8, NMED engaged in an administrative and technical review. *See* NMED Ex. 29 at 9-11. The administrative review is a “review of the presence of the required parts of the application, including the applicant’s modeling analysis and the applicant’s proof of public notice.” *See* NMED Ex. 29 at 9. Based on this review, NMED ruled Application 7746-M8 administratively complete on February 10, 2021. *See* AR at 0267. NMED also conducted a technical review for “verification of emissions calculations and a determination of applicable federal and state regulations.” *See* NMED Ex. 29 at 5. Following both an administrative and technical review, NMED issued the Draft Permit on May 11, 2021. *See* AR at 1056-1108; NMED Ex. 29 at 8.

II. WEG Comments

WEG submitted two separate comment letters to NMED on March 12, 2021 and July 16, 2021 that raised concerns with Application 7746-M8 and the Draft Permit. *See* AR at 1219-1223, 1239-1243. In summary, WEG's concerns related to the attainment status for the 8-Hour Ozone National Ambient Air Quality Standards ("NAAQS") in Lea County; the use of significant impact levels in determining source impacts; compliance with Environmental Justice Executive Order 2005-056; compliance with toxic air pollutant permitting requirements; coverage of all point sources and potential adjacent sources; the enforceability of emissions limits, including limits on startup, shutdown, maintenance ("SSM") and malfunction ("MF") emissions; alleged issues with COPC's modeling; and other "miscellaneous issues." *See* AR at 1241-1243. COPC responded to both WEG letters and conclusively refuted each of WEG's alleged concerns. *See* AR at 1127-1133; 1143-1149. As COPC noted in these responses, all of WEG's concerns related to issues that were either already resolved by the Environmental Improvement Board, addressed during NMED's evaluation of the permit application, do not apply to the Zia Hills Facility's operations, or misstate facts concerning Application 7746-M8. *Id.* NMED also reviewed and responded to WEG's comments and concluded that "the comments do not raise any substantive issues that indicate this permit should not be issued." *See* NMED Ex. 29 at 20.

During the subsequent hearing on October 26, 2021, WEG acknowledged that NMED's written testimony resolved the majority of WEG's issues. *See* 10/26/2021 Hearing Transcript at TR-315:6-20. In fact, WEG's witness stated that NMED had resolved all but two of the issues raised in the March 12 and July 16 letters. *See id.* at TR-317:5-320:10. The only issues WEG carried through the hearing concern compliance with Environmental Justice Executive Order 2005-056 and the enforceability of the emissions limits in Condition A107 of the Draft Permit. *Id.*

III. Permit Hearing

On March 12, 2021, WEG requested a hearing pursuant to 20.2.72.206 NMAC. *See* AR at 1220-1223. The hearing for the Zia Hills Facility was consolidated with a hearing for eight XTO Energy (“XTO”) permits and one Crestwood New Mexico Pipeline LLC (“Crestwood”) permit. The parties to the hearing were WEG, XTO, Crestwood, COPC, and NMED. All parties filed statements of intent to present technical testimony, complete with written testimony of their witnesses, on October 12, 2021. XTO, Crestwood, and COPC also filed a joint motion in limine requesting that the Hearing Officer preclude WEG from offering any documents, testimony, or other evidence in the hearing related to 8-Hour Ozone NAAQS in Eddy and Lea Counties and that any of the proposed permitting actions will necessarily “cause or contribute” to a violation of the ozone NAAQS based on the current statuses of the counties. In response to this motion and prior decisions by the Environmental Improvement Board concerning ozone attainment status, the Hearing Officer ruled that it is irrelevant to hear testimony on whether the ten facilities, including the Zia Hills Facility, will contribute to exceedances of ozone. *See* 10/25/2021 Hearing Transcript at TR-40:7-41:9.

The matter was heard on October 25-26, 2021, by Gregory Chakalian, Office of Public Facilitation’s Administrative Law Judge and appointed Hearing Officer, via the Zoom virtual platform. *See* Scheduling Order (entered 7/20/2021) at 2-3. NMED’s Office of General Counsel represented NMED through Christopher J. Vigil. NMED called the following individuals as witnesses: Rhonda Romero, Eric Peters, Angela Raso, Kathleen Primm, James Nellessen, Kirby Olson, Urshula Bajracharya, Vanessa Springer, Asheley Coriz, Julia Kuhn, and Melinda Owens.

COPC was represented by Scott Janoe and Harrison Reback of Baker Botts LLP. COPC called Dr. Roberto Gasparini as a witness. Dr. Gasparini is the Legal, Audit, & Enforcement Support Program Director at Spirit Environmental, LLC in Houston, Texas.

XTO was represented by Louis Rouse and Kristen Burby of Montgomery & Andrews, PA. XTO called Randy Parmley, Vice President and principal engineer at DiSorbo Consulting, as a witness.

Crestwood was represented by Eric Waeckerlin and Courtney Shephard of Brownstein Hyatt Farber Schreck, LLP. Crestwood called Moshe Wolfe, senior environmental engineer for Crestwood, and Adam Erenstein, principal consultant with Trinity Consultants, as witnesses.

WEG was represented by Matthew Nykiel. WEG called Jeremy Nichols, Climate and Energy Program Director for WEG, as a witness. During his oral testimony, Mr. Nichols acknowledged that NMED's October 12, 2021 written testimony resolved many of WEG's issues previously raised in WEG's public comment letters (dated March 12, 2021 and July 16, 2021) and WEG's October 12, 2021 written testimony concerning the Zia Hills Facility. *See* 10/26/2021 Hearing Transcript at TR-332:21-25-333:1-5. As a result, each of the following issues previously identified in WEG's comment letters and written testimony concerning the Zia Hills Facility were no longer at issue in the hearing:

- Legal Notice
- Ozone
- Pneumatic Controllers
- NO2 Ambient Air Quality Standards
- Miscellaneous

Id. The only issues that WEG carried forward through the hearing concerned 1) the enforceability of emissions limits in Condition A107 of the Draft Permit and 2) alleged noncompliance with Environmental Justice Executive Order 2005-056. *See id.* at TR-317:5-320:10.

CLOSING ARGUMENT

I. Burdens and Standards for Decision

The regulations at 20.1.4.400.A(1) NMAC establish the burdens of persuasion for each party to the hearing. 20.1.4.400.A(1) NMAC states: “Burden of Persuasion: The Applicant or Petitioner has the burden of proof that a permit, license, or variance should be issued and not denied. This burden does not shift. The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed. Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” In turn, 20.1.4.400.A(3) NMAC states that “[t]he Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.”

Accordingly, COPC entered the hearing with the burden to prove by a preponderance of the evidence that the Draft Permit should be issued. That burden did not shift. However, both COPC and NMED offered compelling testimony in favor of issuance of the Draft Permit. COPC carried its burden and demonstrated by a preponderance of evidence that the Draft Permit should be issued. In contrast, WEG failed to carry its own separate burden. In challenging the Draft Permit and any conditions, WEG was required to present an “affirmative case on the challenged condition” by a preponderance of the evidence. 20.1.4.400.A(1) NMAC. WEG failed to raise any legitimate issues, much less present an affirmative case, at any point in the proceeding.

In addition, New Mexico’s minor source permitting regulations at 20.2.72.207.D NMAC state that “[t]he department shall grant the permit, grant the permit subject to conditions, or deny the permit based on information contained in the department’s administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, a statement of matters officially noticed, and if a public hearing is held, the evidence submitted at the hearing. The applicant has the burden of demonstrating that a permit or permit revision should be approved.”

The determination of whether to issue the Draft Permit must be based on the evidence in the record, including any evidence submitted at the October 25-26 public hearing. COPC and NMED provided ample evidence in support of the Draft Permit. The administrative record demonstrates that the Draft Permit met all regulatory requirements and was issued after a diligent review by NMED. The administrative record also includes COPC’s July 28, 2021 and August 18, 2021 letters responding to WEG’s public comments, which resolved each and every issue raised by WEG months before the hearing began. *See* AR at 1127-1133, 1143-1149; *see also* COPC Ex. 3, COPC Ex. 4. Then, once the hearing began, COPC and NMED supported issuance of the permit with credible and informed testimony at the public hearing. In contrast, WEG has provided no evidence – either in the administrative record or at the hearing – to justify a denial of the Draft Permit.

II. WEG has not met its burden

As discussed above, during the hearing, WEG only carried forward two challenges to the Draft Permit for the Zia Hills Facility. WEG’s first challenge concerns the enforceability of the Draft Permit’s emissions limits in Condition A107. As this is a challenge to a permit condition,

WEG had the burden to present an affirmative case by a preponderance of the evidence. WEG's second challenge is a broader challenge to the issuance of the Draft Permit based not on any specific permit condition, but on alleged noncompliance with Environmental Justice Executive Order 2005-056. WEG has failed to carry its burden or present any evidence that would support denial of the Draft Permit on either basis.

A. WEG's witness did not offer technical testimony, is unqualified, and his opinions should not be given any weight

As a threshold matter, WEG's entire case is based on the purported "technical testimony" of Jeremy Nichols. *See* WEG Statement of Intent to Present Technical Testimony (entered 10/12/2021) at 2. However, 20.1.4.7.A(22) NMAC defines technical testimony as "scientific, engineering, economic or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing." None of Mr. Nichols's testimony fits the definition of technical testimony. Rather, Mr. Nichols's testimony is best characterized as legal argument or statements of policy or position, which are excluded from the definition of technical testimony. As such, it is not evidence to be relied on in making a decision.

Even if Mr. Nichols's testimony were appropriate technical testimony (*i.e.*, evidentiary), he was unqualified to offer this testimony. Mr. Nichols's opinions are not informed by a technical degree, legal degree, or any degree at all. Mr. Nichols acknowledged that he has no bachelor's degree in any discipline and no legal degree. Rather, he asserted that he has "lay expertise." *See* 10/26/2021 Hearing Transcript at TR-344:12-16.

WEG had the burden to present an "affirmative case on the challenged condition" by a preponderance of the evidence. *See* 20.1.4.400.A NMAC. Mr. Nichols's speculation on what the law should be and his opinions regarding compliance with legal requirements is not evidence of

any legal fault in the Draft Permit. It is argument and conjecture. As such, WEG failed to meet its burden to put on an affirmative case.

B. WEG did not meet its burden to challenge Condition A107

WEG asserts that the emissions limits for the FL1, FL2/FL3, SSM, and MF units in Condition A107 of the Draft Permit are unenforceable. WEG's assertion is incorrect. The conditions of the Draft Permit and generally understood permitting practices (supported by testimony at the hearing) refute WEG's position. As a general proposition, the plain language of the Draft Permit establishes the enforceability of its conditions. Condition B100 of the permit states that "[c]onditions have been imposed in this permit to assure continued compliance. Similarly, 20.2.72.210.D NMAC states that any term or condition imposed by the Department on a permit is enforceable to the same extent as a regulation of the Environmental Improvement Board." *See* AR at 0492. The obligations in Condition A107 of the draft permit establish emissions limits for FL1, FL2/FL3, SSM, and MF and ties those emissions to a set time period (*i.e.*, pounds per hour and/or tons per year). *See* AR at 0471-0474. Condition A107 also establishes the methods to determine compliance and imposes monitoring, recordkeeping, reporting, and testing obligations. *Id.*

WEG's witness identified two specific bases on which he asserted that the limits in Condition A107 are unenforceable. Mr. Nichols claimed that 1) it is unclear how gas vented during SSM and MF events will be accurately measured to ensure compliance with their respective annual VOC emission limits and 2) the Draft Permit authorizes pound per hour limits for FL1 and FL2/FL3 that would allow the Zia Hills Facility to exceed its annual limits. *See* WEG Ex. 1 at 97. Mr. Nichols is incorrect on both points, as demonstrated in NMED and COPC's testimony.

Accordingly, WEG has not met its burden to demonstrate an affirmative case challenging Condition A107 by a preponderance of evidence.

1. The Draft Permit includes provisions specifying how vented gas is measured

WEG began its challenge to Condition A107 by arguing that the condition is unenforceable unless it contains a greater degree of detail concerning the specific methodology used to measure vented gas. WEG Ex. 1 at 97. This position is inconsistent with accepted permitting practice and has no basis in the law.

Specifically, WEG asserts that “[f]or the ‘SSM’ and ‘MF’ units, the proposed permit does not require the volume of gas vented to be measured by a meter or other means of volumetric measurement. Without such a measurement, it is unclear how gas vented during these events will be accurately measured to ensure compliance with their respective annual VOC emission limits.” *Id.* However, Ms. Coriz’s testimony provided a detailed explanation of how these emissions are measured and explicitly addressed in the Draft Permit. She explained that “[t]he SSM and malfunction conditions require tracking of the VOC emissions based on the inlet gas analysis (% VOC) and the volume of gas released during the SSM or malfunction events. The draft permit also requires monitoring and recordkeeping for all SSM and malfunction events. Malfunctions result in venting to depressurize the portion of the facility experiencing a malfunction. The volume is calculated based on the gas volume within the equipment which is de-pressurized.” *See* NMED Ex. 29 at 14:9-14.

Ms. Coriz also provided additional explanation for how vented gas is measured and addressed in several conditions of the Draft Permit:

For these SSM activities, the releases are determined based on the gas composition, the volume of gas released during an activity, and the number of activities. For compressor blowdowns, the volume of gas from compressor blowdowns is based on the known interior gas

volume within the compressor and the number of times the compressor blows down (releases pressure). The amount of gas is determined from the volume within the line being serviced and the gas composition. The same approach is used for other miscellaneous SSM activities. Because SSM represents various activities, SSM does not have a single volume or capacity. The volumes used in the calculations are based on engineering knowledge of the individual equipment undergoing the startup, shutdown, or maintenance. Condition A206.C requires one or more gas flowmeters equipped with a chart recorder or data logger to monitor the flow of gas sent to FL1. Condition A206.C also requires model estimates using Department approved methods and updates annually based on the current gas analysis, actual tank throughput (Conditions A203.A, A203.B, A203.C, A203.D, and A203.E), and actual VRU downtime to determine flow rates to FL2 and FL3 (Condition A203.F).

See id. at 15:4-17. In short, the volume of gas vented for SSM and MF is calculated using the gas volume of the equipment that has been depressurized. Mr. Nichols took issue with this explanation and asserted during the hearing that “the permits do not set forth any kind of methodology or specific requirement for how the companies must measure the volume of VOC emissions. It uses – the permits use very general language that does not ensure that as a practical matter accurate volumes of VOC emissions will be calculated such that companies will be able to effectively demonstrate compliance with the venting emission limits.” *See* 10/26/2021 Hearing Transcript at TR-319:2-10.

However, Mr. Nichols provided no evidence to support his conclusory assertions or otherwise challenge the sufficiency of the permit condition. He did not provide any technical explanation, refer to any state or federal permitting guidance, relate this to any other permitting action in the state, or even draw examples from personal experience. In contrast, Ms. Coriz provided a detailed explanation of how emissions are tracked on the face of the Draft Permit and explained that “[t]he methodology is based on engineering knowledge which is represented in the application that was submitted by ConocoPhillips which the Department approved and reviewed.”

See 10/26/2021 Hearing Transcript at TR-406:11-15. Ms. Coriz was also clear that the emission limit for venting gas during malfunction “is enforceable in condition A107E of the draft permit.”

See 10/26/2021 Hearing Transcript at TR-401:23-24.

NMED’s approach of relying on engineering knowledge and the permit application is consistent with well-established permitting practices, as demonstrated by Dr. Gasparini. During his testimony, Dr. Gasparini explained that “permits typically include requirements, whether it’s an emissions limit or some sort of standard that have to be met. But they don’t often spell out precisely and exactly the methodology that you need to carry out in order to figure out what exactly is emitted. Those are typically left to the best understanding of the operations that were in place at the time, the physical setup of the equipment there.” *See* 10/26/2021 Hearing Transcript at TR-389:1-8. Dr. Gasparini also noted that by using the entire volume of the process vessels in determining potential emissions calculations, the Draft Permit represents the “high water mark” and “[ensures] sufficient protectiveness by assuming the absolute maximum when conducting those calculation.” *Id.* at TR-390:1-5. Mr. Nichols provided no basis to refute the testimony of Dr. Gasparini and Ms. Coriz beyond his conclusory and uninformed assertions that the Draft Permit did not explicitly outline this methodology on its face.

Given that COPC and NMED established the appropriateness of Condition A107 based on accepted permitting practice, the only other possible challenge Mr. Nichols could raise to the condition would be legal in nature. However, Mr. Nichols provided no evidence of any statutory or regulatory requirement asserting that the type of language used in the condition is insufficient or that a more detailed methodology must be included to make a permit condition enforceable. Even if Mr. Nichols were to assert such a statutory or regulatory requirement, he would be

unqualified to provide such a legal opinion as part of his testimony. WEG has not presented an affirmative case based on this issue.

2. The Draft Permit does not allow the Zia Hills Facility to exceed annual limits

As it concerns FL1 and FL2/3, WEG begins with a false premise that hourly emissions are directly proportionate to annual emissions. WEG's proposed interpretation of the interplay between hourly and annual emissions limits conflicts with decades of established permitting practices at the state and federal level.

WEG asserts that "for the 'FL1' and 'FL2/FL3' units, the proposed permit authorizes pounds per hour and tons per year emissions of NO_x, CO, and VOC without any restriction on the frequency or duration of flaring during SSM. With no restriction on the frequency or duration of flaring during SSM, the annual emission rates are unenforceable as a practical matter." *See* WEG Ex. 1 at 97. However, as explained in Dr. Gasparini's testimony, the Zia Hills Facility cannot operate at the authorized hourly limits for 24 hours a day over the course of 365 days. The Zia Hills Facility's emissions are plainly constrained by the annual limits in Table 107.A for FL1 and FL2/FL3. If the frequency of the Zia Hills Facility's hourly emissions caused it to exceed annual limits, it would be out of compliance with the annual limit, regardless of its compliance with hourly limits. NMED could then bring an enforcement action to seek penalties and force the facility to return to compliance. *See* COPC Amended Ex. 2 at 8:2-13. As Condition B100 notes, "any term or condition imposed by the Department on a permit is enforceable to the same extent as a regulation of the Environmental Improvement Board." *See* AR at 0492. The annual limits are just as enforceable as the hourly limits. If either is exceeded, NMED can take appropriate enforcement action. *See* COPC Ex. 3 at 5-6.

Ms. Coriz expanded on this position, explaining in her testimony that “[e]stablishment of hourly emission limits in any permit does not imply that these emissions are permitted for every hour of the year. Both hourly and annual emission limits are enforceable in an air quality permit. The Bureau establishes hourly limits to ensure compliance with short-term air quality standards and annual emission limits to ensure compliance with long-term air permitting limits. Compliance with the annual limits established in Table 107.A are demonstrated by operating in accordance with the requirements in Conditions A206.C and A206.D and completing monitoring and recordkeeping in Conditions A107.C and A107.D. Records of monthly rolling 12-month total emissions demonstrate compliance with annual limits.” *See* NMED Ex. 29 at 16.

WEG ignores these fundamental principles and the clear explanations on the face of the Draft Permit in favor of self-serving and conclusory assertions by Mr. Nichols that “the intention is that those annual limits serve as a backstop, but as a practical matter, because there are no limits on operational parameters to limit the hourly emissions or the number of hourly emission events, that as a practical matter that backstop is not effective.” *See* 10/26/2021 Hearing Transcript at TR-318:16-21. Mr. Nichols provided no evidence in support of his position that annual emissions limits are not enforceable. Here again, WEG has failed to present an affirmative case and carry its burden at the hearing.

C. WEG did not meet its burden to challenge permit issuance based on Environmental Justice Executive Order 2005-056

WEG asserts that alleged noncompliance with Environmental Justice Executive Order 2005-056 demands that the Draft Permit be denied. *See* WEG Ex. 1 at 98. WEG’s allegations of noncompliance are baseless. COPC understands and appreciates that environmental justice considerations are important in permitting decisions to ensure that low-income communities and communities of color are not disproportionately impacted. For its review of the Zia Hills Facility,

NMED complied with Environmental Justice Executive Order 2005-056 and completed the required environmental justice analysis. In addition, COPC's modeling demonstrates that the Zia Hills Facility will have no harmful impact on *any* member of the public, including any low-income communities or communities of color. *See* 10/26/2021 Hearing Transcript at TR-391:3-393:6. Both NMED's analysis and COPC's modeling confirm that the Zia Hills Facility will not implicate concerns with environmental justice. WEG has provided no evidence to refute this position. Finally, even if there were some deficiency in NMED's compliance with the Environmental Justice Executive Order, there is no statutory or regulatory basis to deny a permit on the basis of noncompliance with an executive order. WEG has again failed to meet its burden to present an affirmative case.

1. NMED complied with the Executive Order

As an initial matter, WEG's concerns have already been resolved. WEG's written testimony asserted that the Draft Permit should be denied because NMED has not provided information regarding its environmental justice analysis. *See* WEG Ex. 1 at 98. However, NMED's written testimony directly addressed this concern. As Ms. Coriz explained, "[f]or each permitting action, NMED uses the EPA EJSCREEN tool to evaluate demographic information for an area around the facility; the area is 4 miles except smaller within urbanized areas. Data from EPA EJSCREEN is evaluated by the permit writer and their manager to evaluate if any additional outreach needs to be done beyond the regulatory requirements. This assessment includes factors such as number of households, per capita income, percent of Linguistically Isolated Households, and percent minority population. Past involvement by the public in air permitting for the facility is also reviewed." *See* NMED Ex. 29 at 17. WEG neither refuted these facts nor documented any specific flaws in this NMED analysis.

As WEG itself notes in Mr. Nichols's written testimony, the Executive Order requires NMED to "utilize available environmental and public health data to address impacts in low-income communities and communities of color as well as in determining siting, permitting, compliance, enforcement, and remediation of existing and proposed industrial and commercial facilities." *See* WEG Ex. 1 at 17-18. Ms. Coriz's explanation demonstrates that NMED conducted the requisite review. In addition, Dr. Gasparini confirmed that the EJSCREEN tool is typically used in air permitting exercises like this as the basis for environmental justice evaluations. *See* 10/26/2021 Hearing Transcript at TR-391:21-392:4. WEG provided no evidence to challenge the sufficiency of NMED's use of this generally accepted tool. Rather, Mr. Nichols claimed that "we object insofar as the Department does not seem to be conditioning the permit to assure compliance with the environmental justice executive order." *See* 10/26/2021 Hearing Transcript at TR-328:6-9. This objection is not grounded in the facts. Accordingly, there is no basis to assert that NMED failed to comply with the Executive Order.

2. There is no disproportionate impact – or any harmful impact – on any member of the public

Environmental Justice Executive Order 2005-056 is intended to prevent disproportionate impacts on low-income communities and communities of color. No such impact exists here. In fact, the testimony demonstrates that there is no harmful impact to the public whatsoever, much less any harmful impact to any portion of the public. By engaging in the EJSCREEN analysis and issuing the permit, NMED made the determination that the Zia Hills Facility would not disproportionately impact low-income communities and communities of color. This determination is supported by COPC's air dispersion modeling. As Dr. Gasparini noted, "the air dispersion modeling for this site shows unequivocally that all offsite impacts are below and – and therefore satisfy all of the standards that are in place to protect the environment and to protect health." *See*

10/26/2021 Hearing Transcript at TR-380:8-12. Accordingly, there can be no disproportionate impact on any group of people.

In addition, Dr. Gasparini conducted his own evaluation using EJSCREEN over a ten-mile radius and agreed with NMED's conclusion. Specifically, he stated that "with the minimal impacts that were viewed – that were presented in the air dispersion modeling. . . the fact of the matter is – is that surrounding areas are not impacted by the Zia Hills [F]acility and – and certainly there are no populations that are disproportionately negatively impacted by the Zia Hills [F]acility." *See* 10/26/2021 Hearing Transcript at TR-392:25-393:6.

WEG did not present any evidence indicating that the Zia Hills Facility will cause an impact on *any* group of people, much less a disproportionate impact on any subset of people. Accordingly, this argument fails as well.

3. There is no statutory or regulatory basis for permit denial based on alleged noncompliance with an executive order

As noted above, COPC and NMED's testimony established that the requirements of Environmental Justice Executive Order 2005-056 have been satisfied. However, even if there were a deficiency, WEG's assertion that alleged noncompliance with an executive order warrants denial of a permit is not based in the law. NMSA Section 74-2-7.C establishes the circumstances in which NMED may deny a permit. In turn, 20.2.72.208 NMAC enumerates eight bases for permit denial. Neither the statute nor the regulation contemplates noncompliance with an executive order as a basis for permit denial. In addition, the Environmental Justice Executive Order 2005-056 itself does not purport to establish a basis for permit denial.

WEG also failed to identify any regulatory basis for denial in its testimony. When asked "where the authority lies" for NMED to deny a permit based on compliance with an executive order, WEG's counsel objected rather than allow his witness to answer. *See* 10/26/2021 Hearing

Transcript at TR-328:13-14. WEG declined to provide a specific basis for denial because none exists. WEG's undefined and unsupported concerns are not sufficient to warrant permit denial.

III. COPC has met its burden for permit issuance

COPC has met the burden in support of the Draft Permit. COPC demonstrated by a preponderance of evidence that Application 7746-M8 met all regulatory requirements, there is no basis for denial of the Draft Permit, and the Draft Permit is appropriate.

A. COPC demonstrated that Application 7746-M8 met all regulatory requirements

Turning first to the permit application, the testimony of COPC's witness, Dr. Roberto Gasparini, established that Application 7746-M8 met all regulatory requirements. Application 7746-M8 included all the information required by 20.2.72.203 NMAC. *See* COPC Amended Ex. 2 at 4. Application 7746-M8 was submitted using the Department's Universal Application Form and divided the information into 23 different sections. Each of the 23 sections contained the information required by the Universal Application Form. *Id.* NMED's witness, Asheley Coriz, confirmed that Application 7746-M8 contained all required elements. Ms. Coriz conducted an administrative review for "the presence of the required parts of the application, including [COPC's] modeling analysis and [COPC's] proof of public notice." *See* NMED Ex. 29 at 3-4. As a result of this review, Ms. Coriz determined that all required information was included, and ruled Application 7746-M8 administratively complete on February 10, 2021. *See* NMED Ex. 29 at 4.

Dr. Gasparini also testified concerning the emissions calculations and air modeling used in support of Application 7746-M8. Dr. Gasparini determined that the emissions calculations were accurate and consistent with accepted practices. *See* COPC Amended Ex. 2 at 3, 7. Emissions estimates for each source of emissions were calculated using AP-42 emissions factors, other generally accepted emissions factors, and Promax models. These are industry standard emissions

inputs that are commonly used in similar permitting actions for this type of facility in New Mexico and across the country. *Id.* at 3.

Dr. Gasparini also determined that COPC's modeling inputs and results were accurate and consistent. *See* COPC Amended Ex. 2 at 3. COPC used an AERMOD model to evaluate potential air impacts. *Id.* AERMOD was developed by the American Meteorological Society/Environmental Protection Agency Regulatory Model Improvement Committee. EPA has approved AERMOD for use in air permitting. *Id.* More importantly, the Department, via its Air Dispersion Modeling Guidelines (last revised October 26, 2020) ("Modeling Guidelines"), has established that AERMOD "is intended to be the standard regulatory model." *See* AR at 0393.

In addition, all of COPC's modeling inputs are consistent with the requirements in the Modeling Guidelines. Among other things, COPC correctly modeled impacts and used data from the appropriate air quality monitors for background concentrations. *See* COPC Amended Ex. 2 at 3-4. Importantly, Section 16 of Application 7746-M8 explained that "the modeling results indicate that the impacts surrounding the facility are in compliance with the ambient air quality standards and the facility will not cause or contribute to an exceedance of the standards." *See* AR at 0257. As Dr. Gasparini further explained in his testimony, "the overall impacts from the facility and surrounding sources don't get anywhere close to any of the standards that are designed to protect public health and the environment." *See* 10/26/2021 Hearing Transcript at TR-382:6-10.

NMED's testimony also supported the sufficiency of the emissions calculations and modeling. As it concerns emissions calculations, Ms. Coriz explained that "[t]he facility emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, engine test stack data that was submitted to the Department, US EPA's AP-42 Compilation of Air Emissions Factors, or Texas Commission on Environmental Quality (TCEQ) Air Emissions

Factors, including TCEQ document RG- 360A/11(February 2012), as well as oil and gas industry software. The emission factors used in the calculations are appropriate for this source type and are, thus, approved by the Department.” *See* NMED Ex. 29 at 7:8-9. Similarly, NMED’s witness Angela Raso explained that modeling for the Zia Hills Facility “was performed in accordance with the New Mexico Modeling Guidelines. If the facility operates in compliance with the terms and conditions of the draft permit, then it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. The facility has satisfied all modeling requirements and the permit may be issued.” *See* NMED Amended Ex. 11.

In contrast, WEG did not identify a single substantive issue with Application 7746-M8. WEG initially raised issues with Application 7746-M8 in its written public comments filed March 12, 2021 and July 16, 2021. *See* AR at 1219-1223, 1239-1243. COPC responded to and resolved these comments via letters to NMED on July 28, 2021 and August 18, 2021. *See* AR at 1127-1133, 1143-1149. WEG then raised the same issues in Mr. Nichols’s written testimony filed on October 12, 2021. *See* WEG Ex. 1 at 94-95. Notably, Mr. Nichols’s testimony did not raise a single issue different than those previously included in WEG’s comment letters. NMED responded to and resolved each of the issues in Mr. Nichols’s testimony via Ms. Coriz’s written testimony filed on October 12, 2021. *See* NMED Ex. 29 at 12-19. COPC also re-addressed these issues in Dr. Gasparini’s written testimony filed on October 12, 2021, which included COPC’s July 28 and August 18 response letters as exhibits. *See* COPC Amended Ex. 2; COPC Ex. 3; COPC Ex. 4. Mr. Nichols acknowledged during the hearing that the written testimony resolved many of WEG’s issues and agreed that WEG would only continue to pursue two issues. *See* 10/26/2021 Hearing Transcript at 317:5-320:10. The two issues that Mr. Nichols asserted remained – enforceability of the emissions limits in Condition A107 of the Draft Permit and compliance

with Environmental Justice Executive Order 2005-056 – do not relate to the sufficiency of the permit application.

B. No statutory or regulatory bases for denial exist

Pursuant to NMSA Section 74-2-7.C, NMED may deny an application for a construction permit if it appears that the construction: (a) will not meet applicable standards, rules or requirements of the Air Quality Control Act (“State Act”) or the Federal Clean Air Act (“Federal Act”); (b) will cause or contribute to air contaminant levels in excess of a national or state standard; or (c) will violate any other provision of the State Act or Federal Act. NMED’s regulations at 20.2.72.208 NMAC implement this statutory authority and establish eight enumerated bases for permit denial, which expand on the three statutory triggers. Pursuant to 20.2.72.208 NMAC, NMED shall deny any application for a permit if:

1. It appears that the construction, modification or permit revision will not meet applicable regulations adopted pursuant to the State Act;
2. The source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board;
3. For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;
4. The construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any NAAQS or New Mexico ambient air quality standard (“NMAAQs”) unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable;

5. The construction, modification, or permit revision would cause or contribute to ambient concentrations in excess of a prevention of significant deterioration (“PSD”) increment;
6. Any provision of the State Act will be violated;
7. It appears that the construction of the new source will not be completed within a reasonable time; or
8. The Department chooses to deny the application due to a conflict of interest in accelerated review as provided for under Subsection C of 20.2.72.221 NMAC.

These eight enumerated issues are the sole regulatory bases for NMED to deny a permit application. Dr. Gasparini evaluated each of these eight bases. As summarized below, none of them apply to the Zia Hills Facility:

1. The Zia Hills Facility will meet applicable regulations adopted pursuant to the Air Quality Control Act.
2. The Zia Hills Facility will not emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board.
3. The Zia Hills Facility is exempt from toxic air permitting requirements because it is an oil and gas production facility, as defined in 20.2.72.401 NMAC. In addition, toxic air pollutants are not expected to be emitted in significant quantities from this type of operation.

4. The Zia Hills Facility will not cause or contribute to air contaminant levels in excess of the NAAQS or NMAAQs.
5. The Zia Hills Facility will not cause or contribute to ambient concentrations in excess of a PSD increment.
6. No provision of the New Mexico Air Quality Control Act will be violated.
7. There is no indication that any construction will not be completed within a reasonable time.
8. COPC did not request an accelerated review, so there is no potential conflict of interest in accelerated review.

See COPC Amended Ex. 2 at 5. Dr. Gasparini's determination was informed by his review of COPC's air modeling data, which indicated that "the impacts surrounding the facility are in compliance with the ambient air quality standards and the facility will not cause or contribute to an exceedance of the standards." *See* AR at 0257. As Dr. Gasparini confirmed during the hearing, "the overall impacts from the facility and surrounding sources don't get anywhere close to any of the standards that are designed to protect public health and the environment." *See* 10/26/2021 Hearing Transcript at TR-382:6-10. Rather, "the air dispersion modeling for this site shows unequivocally that all offsite impacts are below and – and therefore satisfy all of the standards that are in place to protect the environment and to protect health." *Id.* at TR-380:8-12.

NMED also evaluated each of the eight bases for denial as part of its review of Application 7746-M8. By issuing the Draft Permit, NMED determined that none of the bases apply. Although NMED did not provide written testimony outlining the details of its review of each basis for the Zia Hills Facility, Ms. Coriz explained that "[t]he Bureau has completed a technical review of this application. The facility, as represented in the application, demonstrates compliance with all

federal and state regulations. The facility's operations, as represented in this application, do not cause nor significantly contribute to any exceedances of applicable air quality standards." *See* NMED Ex. 29 at 19. This statement alone confirms that six of the eight bases for denial included in 20.2.72.208 NMAC do not exist.

First, Ms. Coriz's determination that the facility demonstrates compliance with all federal and state regulations confirms that 1) construction will meet applicable regulations adopted pursuant to the State Act; 2) there is no issue with toxic air pollutant permitting pursuant to 20.2.72.400 NMAC - 20.2.72.499 NMAC;¹ and 3) no provision of the State Act will be violated. Second, her assertion that the facility's operations will not cause or contribute to any exceedances of applicable air quality standards confirms that 1) the facility will not emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board; 2) the facility will not cause or contribute to air contaminant levels in excess of the NAAQS or NMAAQs; and 3) the facility will not cause or contribute to ambient concentrations in excess of a PSD increment.

The only bases that Ms. Coriz's statement did not explicitly address concern 1) whether construction will be completed within a reasonable time and 2) whether there is a conflict of interest in accelerated review as provided for under Subsection C of 20.2.72.221 NMAC. As explained above, there is no indication that the construction at the Zia Hills Facility will not be completed within a reasonable time, and COPC did not request an accelerated review. NMED agreed that neither basis applied by virtue of its issuing the Draft Permit.

¹ Note that Ms. Coriz also provided testimony explaining that the toxic air pollutant permitting requirements do not apply to the Zia Hills Facility based on its regulatory classification.

Finally, as discussed above concerning WEG's burdens, none of WEG's testimony challenging the Draft Permit is based in the facts, good permitting practice, or the law. WEG's allegations concerning enforceability of the emissions limits in Condition A107 and compliance with Environmental Justice Executive Order 2005-056 are not supported by any evidence. In addition, even if there was some merit to either issue raised by WEG, neither issue is a basis for permit denial in NMSA Section 74-2-7.C or 20.2.72.208 NMAC.

C. The Draft Permit is appropriate

COPC also established the sufficiency of the Draft Permit and its conditions. Dr. Gasparini noted in his testimony that the Draft Permit contains terms and conditions typical of a minor source NSR permit and concluded that "if the Zia Hills Facility is operated in compliance with the terms and conditions of the Draft Permit, it will comply with all applicable air regulations and will not cause or contribute to any exceedance of applicable air quality standards, including NAAQS and PSD increments." *See* COPC Amended Ex. 2 at 6. Similarly, Ms. Coriz determined that "[t]he permit complies with all air quality regulations, and contains demonstrations of compliance for all conditions and emission limits to ensure Ambient Air Quality Standards. The Air Quality Bureau recommends that the Secretary uphold the Department's decision to approve issuance of this Permit." *See* NMED Ex. 29 at 20.

As Ms. Coriz noted in her testimony, she writes "technical support documents and a legally enforceable air permit." *Id.* at 2. She also explained that "[a] permit is an enforceable legal document, and will include emission limits, methods for determining compliance on a regular basis, and will place monitoring, recordkeeping, and reporting requirements to ensure and verify compliance with the requirements of the permit." *Id.* at 11. Consistent with this explanation, the Draft Permit, as written by Ms. Coriz, is legally enforceable. As explained above concerning

WEG's burdens, WEG's asserted issues with the enforceability of the limits in Condition A107 of the Draft Permit are unwarranted.

CONCLUSION

COPC has met its burden in support of issuance of the Draft Permit and WEG has not raised any substantive issues meriting denial of the Draft Permit. For the reasons explained above, the Hearing Officer should recommend issuance of the Draft Permit for the Zia Hills Facility as a final permit.

PROPOSED FINDINGS OF FACT

I. Background and Procedural History for Draft Permit

A. Zia Hills Facility Background

1. COPC's Zia Hills Facility is a central gathering facility located in Lea County, New Mexico. *See* COPC Amended Ex. 2 at 1.
2. Oil, gas, and water flow separately into the Zia Hills Facility. Once there, gas is dehydrated and then either reinjected for gas lift or compressed to the sales line; oil is stabilized, temporarily stored in tanks, and then sold via pipeline; and water is processed, temporarily stored, and shipped offsite via pipeline. *See* COPC Amended Ex. 2 at 1.
3. The Zia Hills Facility uses engine catalysts, reboilers and condensers, a vapor recovery unit (as well as a backup), and three flares to control emissions. *See* COPC Amended Ex. 2 at 1.
4. The Zia Hills Facility currently operates under the General Construction Permit – Oil & Gas issued by NMED. *See* COPC Amended Ex. 2 at 1-2.
5. COPC has operated the Zia Hills Facility pursuant to the General Construction Permit since 2018. *See* COPC Amended Ex. 2 at 2.

6. Operations at the Zia Hills Facility are currently subject to the terms and conditions of the General Construction Permit, along with other state and federal emissions regulations, including 40 CFR Part 60 Subparts JJJJ and OOOOa. *See* COPC Amended Ex. 2 at 1-2.
7. COPC intends to increase production from the Zia Hills Facility to 18,503 barrels of oil per day and 120 million standard cubic feet per day. *See* COPC Amended Ex. 2 at 2.
8. Pursuant to 20.2.72 NMAC, COPC applied for a minor source NSR permit from NMED to authorize the production increase and the equipment needed to support the increase. *See* COPC Amended Ex. 2 at 2.

B. NMED review of Application 7746-M8

9. COPC submitted Application 7746-M8 to NMED on January 9, 2021. *See* AR at 0267; COPC Amended Ex. 2 at 2.
10. NMED received Application 7746-M8 on January 11, 2021. Upon receipt, COPC's modeling files were forwarded to the assigned Air Quality Board ("AQB") modeling staff member for review. *See* AR at 0367; NMED Ex. 29 at 3.
11. On January 26, 2021, AQB requested via email that COPC consultant Evan Tullos and COPC air permit contact Vivian C. Bermudez provide clarifications for Sections 1 and 3 and additional information to support Section 9 of Application 7746-M8. Mr. Tullos submitted the requested information, as well as documentation showing compliance with the public notice requirements of 20.2.72.203.B.1(b), to the Department in two emails,

both sent on January 27, 2021. *See* AR at 0532-0549; NMED Ex. 29 at 3-4.

12. AQB requested via email on February 1, 2021, that Mr. Tullos provide information regarding emission factors gathered from stack test data for engines and clarification on the applicability of 20.2.77 NMAC to the engines. Mr. Tullos replied to NMED's information request on February 1, 2021, with the requested information and an update to Section 13 of Application 7746-M8 addressing applicability of 20.2.77 NMAC. *See* AR at 0557; NMED Ex. 29 at 4.
13. On February 8, 2021, NMED modeling staff confirmed via email to NMED that Application 7746-M8 could be ruled complete from a modeling perspective. *See* AR at 1167; NMED Ex. 29 at 4.
14. NMED requested via email on February 9, 2021, that COPC provide clarification on oil throughput in Table 2-L and engine emission calculations. *See* AR at 0566-0570; NMED Ex. 29 at 4.
15. On February 10, 2021, NMED deemed Application 7746-M8 administratively complete. *See* AR at 0571-0574; NMED Ex. 29 at 4. The permit fee was calculated based on fee units in 20.2.75 NMAC and applicable regulations, and Bureau staff generated an invoice for the permit fee. *See* NMED Ex. 29 at 4.
16. AQB staff sent the completion determination letter, including a copy of NMED's Legal Notice and Preliminary Determination ("Legal Notice"), and the invoice for the permit fee to COPC. *See* AR at 0571-0577; NMED

Ex. 29 at 4-5. The Legal Notice was also sent to EPA Region 6; Erica LeDoux at EPA; and the State of Texas. *See* AR 1246-1252; NMED Ex. 29 at 5.

17. The Legal Notice was posted on the AQB public notice website on February 10, 2021. *See* AR 1253-1254; NMED Ex. 29 at 5.
18. COPC and COPC's consultants submitted several updates in response to NMED inquiries and requests for clarification between January 2021 and September 2021. NMED Ex. 29 at 5-6.
19. The Department sent a Draft Permit to COPC for review and comment on April 27, 2021. The Department requested comments no later than noon on May 4, 2021. COPC submitted comments on the Draft Permit on May 4, 2021, via email. *See* AR at 0960-1013, 1018-1051; NMED Ex. 29 at 7.
20. Following finalization by AQB staff, the final Draft Permit A version 05.06.21 was signed by Elizabeth Kuen and issued on May 11, 2021. *See* AR at 1056-1108; NMED Ex. 29 at 8.
21. AQB staff reviewed the emission calculations submitted in the application for all regulated equipment and the emission factors relied upon in those calculations. The facility emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, engine test stack data that was submitted to NMED, US EPA's AP-42 Compilation of Air Emissions Factors, or Texas Commission on 5 Environmental Quality (TCEQ) Air Emissions Factors, including TCEQ document RG-

360A/11(February 2012), as well as oil and gas industry software. *See* NMED Ex. 29 at 7.

22. The emission factors used in Application 7746-M8's emission calculations are appropriate for this source type and approved by NMED. The approved calculated emission rates were used in the Bureau's air dispersion modeling analysis, which predicts concentrations of the National Ambient Air Quality Standards ("NAAQS"). *See* NMED Ex. 29 at 7.
23. The Department summarized the technical review of Application 7746-M8 in the Statement of Basis, which is a permitting record that includes a description and history of the Zia Hills Facility, public response received by the AQB, a regulatory compliance discussion, and unique conditions in the permit. *See* AR at 0258-0266; NMED Ex. 29 at 7.

C. Public Outreach

24. Application 7746-M8 and the Legal Notice were posted on the AQB public notice webpage on February 10, 2021. *See* AR at 1253-1254; NMED Ex. 29 at 8.
25. The Legal Notice was published in the Hobbs-News Sun on February 17, 2021. As required by 20.2.72.206(A)(5) NMAC, interested parties were allowed 30 days to express an interest in the permit application in writing. The end of the 30-day comment period was March 19, 2021. *See* AR at 1255-1256; NMED Ex. 29 at 8.
26. NMED re-published a Legal Notice that had been revised to include an NMED email address as an additional option for submitting written comments. AQB's administrative staff sent the re-published Legal Notice

to the Albuquerque Journal for publication, and it was published on May 22, 2021. This restarted the 30-day comment period, making June 21, 2021, the end of the comment period. *See* AR at 1259-1260; NMED Ex. 29 at 8.

27. Between May 18, 2021, and May 21, 2021, NMED updated AQB's public interest website to include additional documents associated with Application 7746-M8, including the revised Legal Notice; the original application; calculation updates; application updates; and draft permits. The revised draft statement of basis and revised Legal Notice were posted to the AQB public interest website on May 21, 2021. *See* NMED Ex. 29 at 8-9.

D. Initial and Second Citizen Letters

28. In response to a written expression of interest in Application 7746-M8 received from WEG, NMED sent an Initial Citizen letter to Matt Nykiel at WEG on May 21, 2021, via email and hard copy through the United States Postal Service. *See* AR at 1226-1230; NMED Ex. 29 at 9. The Initial Citizen letter is a template letter developed to comply with 20.2.72.20.B.1 NMAC, requiring the Bureau to "[n]otify each person who expressed an interest in writing in the permit application of the date and the location that NMED's analysis was or will be available for review." The letter confirms that citizens' written comments will be included as part of the permit application record. The letter also provides general information about the permit process, the pending availability of NMED's analysis, and the option to request a public hearing. *See* NMED Ex. 29 at 9.

29. On June 18, 2021, the Department sent a Second Citizen letter to Matt Nykiel at WEG via email and hard copy through the United States Postal Service. *See* AR at 12335-1236; NMED Ex. 29 at 9. The Second Citizen letter is a template letter to notify citizens that NMED's analysis is available for review. The letter had a link to NMED's analysis, including the Statement of Basis, the Draft Permit, and modeling review report, which were posted on the Zia Hills section of the AQB public interest webpage. *See* NMED Ex. 29 at 9-10.
30. Pursuant to 20.2.72.206.B(2) NMAC, the proposed permit could not be issued until at least 30 days after the Department's analysis was available for review.

E. The Request for Hearing

31. WEG submitted comments to NMED on March 12, 2021, that included a request for a public hearing for Application 7746-M8. *See* AR at 1219-1223. The Department then submitted a Public Hearing Request Determination for WEG Related Permit Applications based upon WEG's request. *See* NMED Ex. 29 at 9.
32. The NMED Cabinet Secretary Public Hearing Request Determination for the Zia Hills Facility was granted and signed on June 4, 2021. AQB notified both WEG and COPC via e-mail on June 7, 2021. *See* AR at 1231-1234; NMED Ex. 29 at 9.
33. On June 24, 2021, NMED Cabinet Secretary Kenney ordered a hearing and appointed the Hearing Officer. *See* AR at 1261-1262; NMED Ex. 29 at 10.

34. On July 2, 2021, AQB updated the public interest webpage with an updated red bold font language noting that the second 30-day comment period had begun. *See* AR at 1261-1262; NMED Ex. 29 at 10.
35. WEG submitted their second comments to NMED via email on July 16, 2021. *See* AR at 1239-1244; NMED Ex. 29 at 10.
36. On July 20, 2021, the Scheduling Order was filed, setting the start date for the public hearing as October 25, 2021. *See* Scheduling Order (entered 7/20/2021).

F. Modifications to Hearing Due to Public Health Emergency

37. On July 23, 2021, Governor Michelle Lujan Grisham entered Executive Order 2021-044 renewing the declaration of public health emergency in response to the continued spread of COVID-19 in New Mexico. *See* NMED Ex. 29 at 10.
38. On August 6, 2021, an Order Amending the Scheduling Order was filed to include notification that a hybrid virtual hearing would be held to accommodate members of the public who do not have access to a computer or an internet connection. *See* Order Amending Scheduling Order (entered 8/6/2021).
39. On August 16, 2021, NMED launched a new website design. A link to the documents for the Zia Hills Facility was included in the Department's Notice of Hearing. *See* NMED Ex. 29 at 11.
40. On August 31, 2021, the AQB public interest webpage was updated to include the August 27, 2021 Draft Statement of Basis. On September 8, 2021, the AQB public interest webpage was updated to include the August

31, 2021 updates. On September 22, 2021, the AQB public interest webpage was updated to include updates received through September 21, 2021, the NMED Events Calendar, and the Notice of Hearing. *See* AR at 1270-1273; NMED Ex. 29 at 11.

G. Notice and Public Outreach for the Hearing

41. Pursuant to NMAC 20.1.4.200(C)(2), NMED prepared the Notice of Public Hearing regarding COPC's Application, providing that a virtual hearing would be held beginning on October 25, 2021, at 9:00 a.m. and provided a link as well as telephone numbers by which members of the public could participate in the virtual hearing. *See* AR at 1276-1279.
42. NMED's Notice of Hearing was translated into Spanish. *See* AR at 1280-1284.
43. NMED's Notice of Hearing included a brief description of the nature and location of the action to be considered in COPC's Application 7746-M8, including COPC's name and address; information as to how and where to obtain NMED's Draft Permit and COPC's Application 7746-M8; and the requirements for entering an appearance for the hearing, providing technical testimony for the hearing, or offering a general written or oral statement in writing before the hearing or verbally at the hearing. *See* AR at 1276-1279; NMAC 20.1.4.200(C)(2)(a)(ii), (iii), and (iv).
44. The Notice of Hearing also stated the applicable provisions of the New Mexico Administrative Code. *See* NMAC 20.1.4.200(C)(2)(a)(v).
45. On or about September 22, 2021, NMED:

- (i) emailed the Notice of Hearing in both English and Spanish to individuals and groups that had previously been directly notified about one of the permit applications or that submitted comments on a permit application. *See* AR at 1274-1350; *see also* NMAC 20.4.1.200(C)(2)(b)(ii).
 - (ii) emailed the Notice of Hearing in both English and Spanish to EPA Region 6, Erica LeDoux and Mary Layton at EPA, Jeremy Nichols and Matthew Nykiel at WEG, TCEQ, CCNP, the Bureau of Land Management, the New Mexico State Land Office, and Lea County and Eddy County Managers. *See* AR at 1246-1252; *see also* NMAC 20.4.1.200(C)(2)(b)(iii).
 - (iii) Published the Notice of Hearing in both English and Spanish in the *Hobbs News-Sun* pursuant to NMED's request and at NMED's expense. *See* AR at 1255-1256; *see also* NMAC 20.1.4.200(C)(2)(b)(i) & (v).
 - (iv) published the Notice of Hearing in both English and Spanish in the *Albuquerque Journal* pursuant to NMED's request and at NMED's expense. *See* AR at 1259-1260; *see also* NMAC 20.1.4.200(C)(2)(b)(i) & (v).
46. NMED sent requests for public service announcements in Spanish to run on Spanish radio stations that are broadcast in Lea County and Eddy County. AR at 1382-1396.

II. Evidence in Support of COPC's Burden to Show the Draft Permit Should be Approved and not Denied

A. Sufficiency of Application 7746-M8 and Supporting Materials

47. The Zia Hills Facility is defined as a "minor source" for PSD purposes. *See* AR at 0219.
48. Application 7746-M8 must include the applicable information from 20.2.72.203 NMAC.
49. COPC submitted Application 7746-M8 using NMED's approved Universal Application form. *See* AR at 0004.
50. NMED reviewed Application 7746-M8 to confirm that it included all required parts of the application, including COPC's modeling analysis and COPC's proof of public notice. *See* NMED Ex. 29 at 3.
51. NMED ruled Application 7746-M8 administratively complete on February 10, 2021. *See* AR at 0267.
52. The Zia Hills Facility's emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, engine test stack data that was submitted to the Department, US EPA's AP-42 Compilation of Air Emissions Factors, or Texas Commission on Environmental Quality (TCEQ) Air Emissions Factors, including TCEQ document RG- 360A/11 (February 2012), as well as oil and gas industry software. The emission factors used in the calculations are appropriate for this source type and are, thus, approved by NMED. *See* NMED Ex. 29 at 6-7.
53. In order to be issued an NSR permit, COPC's Application 7746-M8 must demonstrate that construction of the proposed facility will not cause or

contribute to any violations of NAAQS or NMAAQs, PSD increments, or State Air Toxic pollutant requirements. *See* NMED Amended Ex. 11.

54. NAAQS are periodically reviewed by the Environmental Protection Agency and are designed to protect the most sensitive individuals. *See* NMED Amended Ex. 11.
55. PSD increments are designed to maintain the air quality of pristine areas. Toxic permitting thresholds prevent neighbors from being exposed to more than one percent of the amount that has been deemed acceptable for workers to be exposed to throughout the day. *See* NMED Amended Ex. 11.
56. COPC used an AERMOD model to evaluate potential air impacts from the Zia Hills Facility. AERMOD was developed by the American Meteorological Society/Environmental Protection Agency Regulatory Model Improvement Committee. EPA has approved AERMOD for use in air permitting. *See* COPC Amended Ex. 2 at 3.
57. NMED has established that AERMOD “is intended to be the standard regulatory model.” *See* AR at 0393.
58. NMED staff reviewed COPC’s modeling and determined that it was performed in accordance with the New Mexico Modeling Guidelines. *See* NMED Amended Ex. 11.
59. The Department maintains the New Mexico Modeling Guidelines to provide a basis for acceptable modeling analyses. These guidelines incorporate and interpret the most recent version of EPA’s Guideline on Air Quality Models, which was published in the Federal Register, Vol. 82, No.

10. The New Mexico Modeling Guidelines also incorporate other information and guidance, such as EPA memorandums. *See* NMED Amended Ex. 11.

60. Based on review of the Zia Hills Facility's modeling data, NMED staff determined that if the facility operates in compliance with the terms and conditions of the Draft Permit, then it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. *See* NMED Amended Ex. 11.

61. NMED staff determined that the Zia Hills Facility has satisfied all modeling requirements and the permit may be issued. *See* NMED Amended Ex. 11.

B. Sufficiency of the Draft Permit

62. A permit is an enforceable legal document, and will include emission limits, methods for determining compliance on a regular basis, and will place monitoring, recordkeeping, and reporting requirements to ensure and verify compliance with the requirements of the permit. *See* NMED Ex. 29 at 11.

63. Conditions in Part A of the permit are Facility Specific Requirements, unique to the facility. They are site-specific and based on information provided in the application. Conditions in Part B of the permit are General Conditions and standard language which generally apply to all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. *See* NMED Ex. 29 at 12.

64. Permit conditions establish ongoing testing and monitoring requirements for processes and pieces of equipment to ensure the equipment is operating in accordance with the permitted emissions limits. *See* NMED Ex. 29 at 12.
65. COPC's witness confirmed that the Draft Permit contains terms and conditions typical of a minor source NSR permit. *See* COPC Amended Ex. 2 at 6.
66. NMED's and COPC's witnesses confirmed that the Draft Permit establishes reasonable and effective emissions limits, covers all point sources of emissions at the Zia Hills Facility, and establishes detailed monitoring, recordkeeping, and reporting obligations. *See* NMED Ex. 29 at 11, 14-16, 18; COPC Amended Ex. 2 at 6.
67. NMED's and COPC's witnesses determined that if the Zia Hills Facility is operated in compliance with the terms and conditions of the Draft Permit, it will comply with all applicable air regulations and will not cause or contribute to any exceedance of applicable air quality standards, including NAAQS and PSD increments. *See* NMED Amended Ex. 11; NMED Ex. 29 at 19-20; COPC Amended Ex. 2 at 6.
68. NMED staff determined that the Draft Permit complies with all air quality regulations, and contains demonstrations of compliance for all conditions and emission limits to ensure Ambient Air Quality Standards. *See* NMED Ex. 29 at 19-20.
69. NMED recommended that the Secretary uphold NMED's decision to approve issuance of this permit. *See* NMED Ex. 29 at 20.

C. Bases for Denial do not Apply

- 70. COPC's witness evaluated the eight regulatory bases for denial of the Draft Permit and determined that none apply. *See* COPC Amended Ex. 2 at 5.
- 71. NMED staff, by issuing the Draft Permit, determined that none of the eight regulatory bases for denial apply.
- 72. NMED staff determined that if the Zia Hills Facility operates in compliance with the terms and conditions of the Draft Permit, then it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. *See* NMED Ex. 29 at 19-20.
- 73. NMED supports issuance of the Draft Permit. *See* NMED Ex. 29 at 20.

III. WEG's Opposition to the Draft Permit and Conditions

A. WEG Comments

- 74. WEG submitted two separate comment letters to NMED on March 12, 2021 and July 16, 2021 that raised concerns with Application 7746-M8 and the Draft Permit. *See* AR at 1219-1223, 1239-1243.
- 75. WEG's concerns related to the attainment status for the 8-Hour Ozone NAAQS; the use of significant impact levels in determining source impacts; compliance with Environmental Justice Executive Order 2005-056; compliance with toxic air pollutant permitting requirements; coverage of all point sources and potential adjacent sources; the enforceability of emissions limits, including limits on SSM and MF emissions; alleged issues with COPC's modeling; and other "miscellaneous issues." *See* AR at 1219-1223, 1239-1243.

- 76. NMED reviewed and responded to each of WEG's concerns. NMED determined that the comments do not raise any substantive issues that indicate the Draft Permit should not be issued. *See* NMED Ex. 29 at 12-19.
- 77. During the hearing, WEG's witness acknowledged that NMED's pre-filed written testimony resolved all but two issues for the Zia Hills Facility. *See* 10/26/2021 Hearing Transcript at TR-332:21-25-333:1-5.
- 78. The only issues WEG carried through the hearing concerned compliance with Environmental Justice Executive Order 2005-056 and enforceability of emissions limits in Condition A107. *See* 10/26/2021 Hearing Transcript at TR-332:21-25-333:1-5.

B. Executive Order 2005-056/Environmental Justice

- 79. WEG took issue with NMED's compliance with Environmental Justice Executive Order 2005-056 in issuing the Draft Permit. *See* WEG Ex. 1 at 98.
- 80. Executive Order 2005-056 directs NMED to utilize available environmental and public health data to address impacts in low-income communities and communities of color as well as in determining siting, permitting, compliance, enforcement, and remediation of existing and proposed industrial and commercial facilities. *See* WEG Ex. 1 at 18.
- 81. WEG asserted that absent information concerning NMED's review, a determination granting the proposed permit would violate Executive Order 2005-056. *See* WEG Ex. 1 at 98.

82. NMED provided details of its review and testified that for each permitting action, NMED uses the EPA EJSCREEN tool to evaluate demographic information for an area around the facility; the area is 4 miles except smaller within urbanized areas. Data from EPA EJSCREEN is evaluated by the permit writer and their manager to evaluate if any additional outreach needs to be done beyond the regulatory requirements. This assessment includes factors such as number of households, per capita income, percent of Linguistically Isolated Households, and percent minority population. Past involvement by the public in air permitting for the facility is also reviewed. *See* NMED Ex. 29 at 17.
83. COPC's witness testified that the EJSCREEN tool is typically used in air permitting exercises like this as the basis for environmental justice evaluations. *See* 10/26/2021 Hearing Transcript at 391:21-392:4.
84. COPC's witness testified that COPC's air dispersion modeling shows that surrounding areas are not impacted by the Zia Hills Facility and there are no populations that are disproportionately negatively impacted by the Zia Hills Facility. *See* 10/26/2021 Hearing Transcript at 392:25-393:6.
85. WEG did not present any evidence indicating that NMED failed to comply with the Executive Order 2005-056 or that the Zia Hills Facility will cause a disproportionate impact on any group of people.
86. Compliance with Executive Order 2005-056 and environmental justice principles are not a listed basis for permit denial in NMSA Section 74-2-7.C or 20.2.72.208 NMAC.

C. Enforceability of Emissions Limits in Condition A107

87. WEG took issue with the enforceability of the emissions limits in Condition A107. *See* WEG Ex. 1 at 96-97.
88. WEG asserted that it is unclear how gas vented during SSM and MF events will be accurately measured to ensure compliance with their respective annual VOC emission limits. *See* WEG Ex. 1 at 96-97.
89. SSM and MF conditions require tracking of the VOC emissions based on the inlet gas analysis (% VOC) and the volume of gas released during the SSM or MF events. *See* NMED Ex. 29 at 14:9-14.
90. The Draft Permit requires monitoring and recordkeeping for all SSM and MF events. Malfunctions result in venting to depressurize the portion of the facility experiencing a malfunction. The volume is calculated based on the gas volume within the equipment which is de-pressurized. *See* NMED Ex. 29 at 14:9-14.
91. For SSM activities, the releases are determined based on the gas composition, the volume of gas released during an activity, and the number of activities. For compressor blowdowns, the volume of gas from compressor blowdowns is based on the known interior gas volume within the compressor and the number of times the compressor blows down (releases pressure). The amount of gas is determined from the volume within the line being serviced and the gas composition. The same approach is used for other miscellaneous SSM activities. *See* NMED Ex. 29 at 15.

92. Because SSM represents various activities, SSM does not have a single volume or capacity. The volumes used in the calculations are based on engineering knowledge of the individual equipment undergoing the startup, shutdown, or maintenance. Condition A206.C requires one or more gas flowmeters equipped with a chart recorder or data logger to monitor the flow of gas sent to FL1. Condition A206.C also requires model estimates using Department approved methods and updates annually based on the current gas analysis, actual tank throughput (Conditions A203.A, A203.B, A203.C, A203.D, and A203.E), and actual VRU downtime to determine flow rates to FL2 and FL3 (Condition A203.F). *See* NMED Ex. 29 at 15.
93. The methodology for calculating emissions vented is based on engineering knowledge represented in the application that was submitted by COPC, which NMED approved and reviewed. *See* NMED Ex. 29 at 15.
94. WEG asserted that the Draft Permit authorizes pound per hour limits for FL1 and FL2/FL3 that would allow the Zia Hills Facility to exceed its annual limits. *See* WEG Ex. 1 at 97.
95. NMED staff testified that establishment of hourly emission limits in any permit does not imply that these emissions are permitted for every hour of the year. Both hourly and annual emission limits are each separately enforceable in an air quality permit. NMED establishes hourly limits to ensure compliance with short-term air quality standards and annual emission limits to ensure compliance with long-term air permitting limits. Compliance with the annual limits established in Table 107.A are

demonstrated by operating in accordance with the requirements in Conditions A206.C and A206.D and completing monitoring and recordkeeping in Conditions A107.C and A107.D. Records of monthly rolling 12-month total emissions demonstrate compliance with annual limits. *See* NMED Ex. 29 at 16.

96. COPC's witness testified that sources are typically permitted with both hourly and annual limits. If a source exceeds the hourly limits, it is subject to enforcement by the applicable regulatory authority. Similarly, if the source exceeds annual emissions limits, it is subject to enforcement, regardless of its compliance with hourly limits. *See* 10/26/2021 Hearing Transcript at TR-383:3-12. The Zia Hills Facility's emissions are therefore necessarily constrained by annual emission limits.
97. No person presented any evidence that Application 7746-M8 should be denied, or that the Draft Permit should not be granted for the reasons contained in NMSA Section 74-2-7.C of the State Act or 20.2.72.208 NMAC.

PROPOSED CONCLUSIONS OF LAW

1. Application 7746-M8 complies with all the applicable requirements of 20.2.72.203 NMAC, all applicable requirements of the State Act and Federal Act, and the applicable Air Quality Control Regulations for issuance of a construction permit.
2. The Secretary of Environment has jurisdiction over the subject matter of COPC's application and the parties to this proceeding, and is authorized by the State Act to issue or deny air quality construction permits based upon information submitted in a permit application and relevant information received during the public hearing.
3. Pursuant to NMSA Section 74-2-7.C, NMED may deny an application for a construction permit if it appears that the construction: (a) will not meet applicable standards, rules or requirements of the State Act or Federal Act; (b) will cause or contribute to air contaminant levels in excess of a national or state standard; or (c) will violate any other provision of the State Act or Federal Act.
4. Pursuant to 20.2.72.208 NMAC, NMED shall deny an application for a permit if, after considering emissions after controls: (a) it appears that the construction will not meet applicable regulations adopted pursuant to the State Act; (b) the source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board; (c) for toxic air pollutants see 20.2.72.400 NMAC – 20.2.72.499 NMAC; (d) the construction will cause or contribute to air contaminant levels in excess of any NAAQS or NMAAQs unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable; (e) the construction, modification, or permit revision would cause or contribute to ambient

concentrations in excess of a PSD increment; (f) any provision of the State Act will be violated; (g) it appears that the construction of the new source will not be completed within a reasonable time, or (h) the department chooses to deny the application due to a conflict of interest in accelerated review provided for under Subsection “C” of 20.2.72.221 NMAC.

5. No evidence was presented at the hearing to support any basis for denying a permit under NMSA Section 74-2-7.C or 20.2.72.208 NMAC.
6. NMSA Section 74-2-7.D authorizes NMED to impose conditions on a construction permit, including: (a) a requirement that the source install and operate control technology, determined on a case-by-case basis, sufficient to meet applicable standards, rules and requirements under the State Act or Federal Act; (b) individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the State Act or Federal Act, or the emission rate specified in the permit application, whichever is more stringent; (c) compliance with federal New Source Performance Standards, Emission Standards for Hazardous Air Pollutants and Maximum Achievable Control Technology Standards; (d) reasonable restrictions and limitations not relating to emission limits or emission rates; or (e) any combination of the above.
7. 20.2.72.210.B NMAC repeats the statutory authority to impose conditions in a construction permit, except that for a modification, this authority applies only to the facility or facilities involved in the modification.
8. The conditions proposed by NMED satisfy the requirements of NMSA Section 74-2-7.D and 20.2.72.210.B NMAC.
9. COPC has complied with all requirements of the State Act and the New Mexico Air Quality Control Regulations for the filing of Application 7746-M8.

10. COPC has demonstrated that its operations at the Zia Hills Facility do not and will not pose an undue hazard to public health, to the environment, or to property.
11. COPC has demonstrated that air emissions at the Zia Hills Facility do not and will not cause or contribute to exceedances of NAAQS, NMAAQs, or PSD increments.
12. COPC and NMED have fully complied with the requirements of Environmental Justice Executive Order 2005-056.
13. The emissions limits on in Condition A107 of the Draft Permit concerning FL1, FL2/3, SSM, and MF are enforceable.
14. Application 7746-M8, the public hearing, and the administrative record reveal no basis under the State Act, or applicable regulations, or the Environmental Justice Executive Order 2005-056 upon which to deny the permit to COPC.
15. The permit conditions proposed by NMED in the Draft Permit are enforceable and necessary and appropriate to protect human health and the environment and to ensure compliance with the State Act and applicable regulations.
16. Issuance of an air quality construction permit to COPC, as requested in Application 7746-M8 and with the operational limits, controls, requirements, and emissions limits in the Draft Permit, is in conformance with the State Act and applicable regulations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2021, a true and correct copy of the foregoing ***ConocoPhillips Company's Closing Argument and Proposed Findings of Fact and Conclusions of Law*** was served via electronic mail to the following:

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